

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :

v. : **No. 06-CR-319-03**
(William H. Yohn, Jr., J.)

VINCENT J. FUMO, :

Defendant. :

**DEFENDANT FUMO'S RESPONSE TO MOTION TO QUASH
SUBPOENA DUCES TECUM FOR WITNESS'S EDUCATIONAL RECORDS**

The United States has filed a motion (DE #260) to quash two trial subpoenas duces tecum properly issued by the defense for educational records relating to an important government witness, Christian Marrone. While the institutions receiving the subpoenas have not complained or filed any motion, they did preliminarily respond in accordance with 20 U.S.C. § 1232g(b)(2)(B) by notifying the affected witness, who in turn informed the United States Attorney's Office. The government's instant motion followed.

The United States lacks standing to move to quash any subpoena not directed to the government or any agency thereof. See In re Grand Jury Proceedings (FMC Corp.), 604 F.2d 804, 805 (3d Cir. 1979) (per curiam) (corporation lacks standing to object to subpoena to its employees). Moreover, once the witness surrendered a copy of his educational files to the government, rather than bringing them to his own attorney for the purpose of considering a motion to quash, he

waived any objection based on privacy or confidentiality that he might have had. Id. In addition, once those files came into the government's possession, the prosecution acquired duties of disclosure it might not previously have had.

The Court need not rule on any of these points, however. The government has now forwarded sufficient portions of Marrone's educational files to defense counsel to satisfy the purpose of the underlying subpoenas. Accordingly, the defense does not choose to pursue further enforcement.

WHEREFORE, the defendant prays that the Court deny the government's motion to quash as moot.

Respectfully submitted,

Dated: September 1, 2008

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CERTIFICATE OF SERVICE

On September 2, 2008, I served a copy of the foregoing document through the Court's electronic filing system on the attorneys for the government and on counsel for the affected co-defendant, addressed as follows:

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